Filed 4/25/06 In re Joel R. CA2/1

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re JOEL R., a Person Coming Under the Juvenile Court Law.	B184872 (Los Angeles County Super. Ct. No. FJ36434)
THE PEOPLE, Plaintiff and Respondent, v. JOEL R., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Shep Zebberman, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Lynette Gladd Moore, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, and Lawrence M. Daniels and Ryan B. McCarroll, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

In a Welfare and Institutions Code section 602 petition, the People alleged that defendant Joel R. violated Penal Code section 12101, subdivision (a)(1), which prohibits a minor from possessing a firearm that is capable of being concealed upon the person. After denying defendant's motion to suppress the firearm (Welf. & Inst. Code, § 700.1), the trial court found the allegation in the petition to be true, sustained the petition as a felony, declared defendant a ward of the court and placed him in the Camp Community Placement Program for three months. On appeal, defendant challenges the denial of his suppression motion. We affirm.

BACKGROUND

On June 7, 2005, Los Angeles Police Officer David Dilkes was assigned to the gang unit and worked in an area occupied by the 18th Street and the West Boulevard Crips gangs. Officer Dilkes was a West Boulevard Crips expert; other officers in his unit were experts with respect to 18th Street. All officers in the gang unit worked together to calm the problem caused by an ongoing war between the two gangs and "to provide directed patrol." Members of the West Boulevard Crips continually tried to shoot members of 18th Street. There had been numerous drive-by shootings and homicides.

Between 6:00 and 10:00 p.m. on June 7, Officer Dilkes and his partner, Officer Alfredo Ibanez, were "[p]roviding directed patrol for on-going gang problems" in the vicinity of Blackwelder Street and Cochran Avenue. The officers were in uniform and patrolling in a readily identifiable police car.

Officer Dilkes saw "four male Hispanics standing just south of the residence of a known gang location." The individuals, who where dressed in attire typically worn by members of 18th Street gang, were standing about 1 foot in front of a 25-foot wall on which someone had spray painted "18th Street" across the length of the wall. Inasmuch

this particular graffiti had not been on the wall when Officer Dilkes drove by it three or four times the previous day, he decided to conduct a "felony vandalism investigation."

When the police car stopped, two of the individuals fled. The officers got out of their patrol car, at which time Officer Ibanez commanded defendant and the fourth individual to stop, face the wall, and put their hands on their heads. According to Officer Dilkes, they were not free to leave. Although defendant started to walk away, he stopped and placed his left hand on his head. Defendant then started to reach into his pants pocket with his right hand, at which point the officers drew their weapons. Defendant pulled out a fully loaded handgun from his pocket and tossed it to the ground. Following his arrest, defendant admitted that he was a member of the 18th Street gang. The other individual belonged to a gang in the east valley.

In denying defendant's suppression motion, the trial court stated: "[T]he initial stop was based upon the felony vandalism investigation, that was based upon the fact that he works the gang unit in that area. They travel past that residence 3 to 4 times per day. He noticed new 18th Street prominent[ly] spray painted on the residen[ce] that was not there the day before. He noticed four males standing one foot from the . . . graffiti at a residence that's known to be a gang residence. He also notices two of the men running. He orders them to stop in order[] to conduct his investigation. He then orders the minor to turn around, the two that remain to turn around. Initially the minor begins to walk away. He then turns, begins to turn around and puts one hand on his [head] and reaches into his pocket. I think the officer has articulated the facts that indicate that this minor is involved or may have been involved in a crime, and was justified in reasonably being in fear for his safety. The motion is denied."

DISCUSSION

Where, as here, the facts adduced at a suppression hearing are undisputed, a question of law is presented. The reviewing court independently must decide whether the facts support the court's determination that the search or seizure was reasonable within

the meaning of the Fourth Amendment. (*People v. Woods* (1999) 21 Cal.4th 668, 673-674; *In re Lennies H.* (2005) 126 Cal.App.4th 1232, 1236; *People v. Pitts* (2004) 117 Cal.App.4th 881, 884-885.)

Defendant contends the undisputed evidence establishes more than a consensual encounter; it establishes that the police detained him. The People do not contend otherwise. Rather, for purposes of argument, they assume that defendant correctly asserts that he was detained when Officer Ibanez ordered him to stop.

A consensual encounter, which may be initiated by police without objective justification, does not restrain an individual's liberty in any way. (*People v. Hughes* (2002) 27 Cal.4th 287, 327.) It is strictly voluntary in nature. The individual approached by police is under no compulsion to remain or engage in any discourse. He may simply walk away. (*People v. Franklin* (1987) 192 Cal.App.3d 935, 940.) A detention, however, is a seizure within the meaning of the Fourth Amendment (*Hughes, supra,* at p. 327) and occurs when under the circumstances a reasonable person believes he is not free to leave. (*United States v. Mendenhall* (1980) 446 U.S. 544, 554; *People v. Jones* (1991) 228 Cal.App.3d 519, 523.)

In this case, Officer Ibanez ordered defendant and his companion to stop. The officer further ordered them to face the wall and place their hands on their heads. This was not a command either individual was free to ignore. Officer Dilkes openly admitted that defendant and other individual were not free to leave. We therefore agree with defendant that he was detained when Officer Ibanez ordered him to stop.

The question left to be resolved is whether the detention was lawful. "'A detention is reasonable under the Fourth Amendment when the detaining officer can point to specific articulable facts that, considered in light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity.'" (*People v. Hester* (2004) 119 Cal.App.4th 376, 386, quoting *People v. Souza* (1994) 9 Cal.4th 224, 231; accord, *Terry v. Ohio* (1968) 392 U.S. 1, 21.) Curiosity, rumor and hunch alone do not justify an investigative stop. (*In re Tony C.* (1978) 21 Cal.3d 888, 893.)

Defendant contends the judgment must be reversed because the officers did not have reasonable suspicion to detain him and, consequently, the gun was recovered as a result of an unconstitutional seizure and should have been suppressed. Our decision in *In re Stephen L.* (1984) 162 Cal.App.3d 257 compels the rejection of defendant's contention.

In *In re Stephen L.*, *supra*, 162 Cal.App.3d 257, officers assigned to a gang detail had received complaints of vandalism and graffiti on the walls of the administration building of a park in Hollywood. This particular park was a known hangout for the Clanton Street gang, and one of the officers knew that there had been prior violent gang activity at the park.

When the officers walked into the courtyard of the administration building, they saw "'freshly painted gang type graffiti on the walls,' which 'was really new graffiti' within a day or two old." (*In re Stephen L.*, *supra*, 162 Cal.App.3d at p. 259.) The graffiti included the gang's name, logo and the names and nicknames of various gang members. (*Ibid*.) The officers also saw six gang members standing in a group three or four feet from the wall that had been vandalized. Four of these individuals, not including Stephen L., were known members of Clanton. (*Id*. at pp. 259-260.) As soon as the officers walked toward the group, the individuals split into two groups and tried to leave the area in different directions. (*Id*. at p. 260.)

The officers detained all six youths in order to conduct a vandalism investigation. One of the officers patted them down for weapons and possible spray paint cans. The large number of suspects and knowledge that gang members carry weapons provided the justification for the pat downs. A cursory search of Stephen L. revealed a knife, which led to the filing of a Welfare and Institutions Code section 602 petition that the court sustained. (*In re Stephen L.*, *supra*, 162 Cal.App.3d at p. 260.) On appeal, this Division affirmed the lower court's dispositional order and rejected the minor's assertion that he had been unlawfully detained and that the cursory search which revealed the knife was constitutionally infirm. (*Id*. at pp. 260-261.)

The facts of this case are strikingly similar to those in *In re Stephen L., supra*, 162 Cal.App.3d 257. Here, officers assigned to a gang unit noticed new 18th Street gang graffiti on a wall near a known gang location located in a neighborhood in which a gang war was occurring. Four individuals who were dressed in attire typically worn by members of the 18th Street gang were standing in very close proximity to a known gang location and directly in front of a wall across which "18th Street" prominently and recently had been painted. When the officers got out of their car, two of the individuals immediately ran away. This evasive behavior reasonably added to the officers' suspicion. (*Illinois v. Wardlow* (2000) 528 U.S. 119, 124.) Inasmuch as the facts in this case closely parallel those in *Stephen L.*, we conclude, as we did in *Stephen L.*, that the facts known to the officers provided the necessary objective justification for detaining defendant in order to conduct a vandalism investigation.

That Officer Dilkes could not definitively identify defendant or any of his three companions as actual members of 18th Street gang prior to the detention is inconsequential. Under the circumstances, it was objectively reasonable for Officer Dilkes to believe that defendant and the others were members of 18th Street gang given their attire and their presence in that particular area, and, as defendant himself concedes, the vandal likely was a member of 18th Street gang. That Officer Dilkes did not see defendant or the others holding a can of spray paint does not preclude a finding of reasonable suspicion. Any vandal simply could have secreted a spray paint can on his person. Undoubtedly, it is what the intended investigation was designed to uncover.

Defendant's attempts to distinguish *In re Stephen L.* on its facts and to convince us to depart from *Stephen L.* due to the prevalence of gang activity today are unconvincing. We stand by our decision in *Stephen L.* and find the cases upon which defendant relies in support of reversal to be factually distinguishable or simply unpersuasive.[1]

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[1] See *People v. Hester*, *supra*, 119 Cal.App.4th 376; *People v. Pitts*, *supra*, 117 Cal.App.4th 881; *People v. Rodriguez* (1993) 21 Cal.App.4th 232; *People v. Jones*, *supra*, 228 Cal.App.3d 519.

With regard to defendant's further assertion that the officers did not have reasonable suspicion to believe he was armed, we conclude that the officers were justified in ordering defendant to place his hands on his head as a preliminary step to performing a pat down for weapons. An officer who lawfully has made an investigative stop also may conduct a cursory search of the individual if the facts permit the reasonable conclusion that the person might be armed and presently dangerous. Absolute certainty that an individual is armed is not required. That a reasonable person under the circumstances would fear for his safety or that of another is all that is needed. (*People v. Castaneda* (1995) 35 Cal.App.4th 1222, 1230, citing *Terry v. Ohio*, *supra*, 392 U.S. at p. 27.)

It is common knowledge among police officers that gang members often carry weapons. The officers in this case were part of a gang unit responsible for calming the ongoing hostilities between two rival gangs. The current gang war had resulted in drive-by shootings and the loss of human life. The officers thus had reason to fear that any potential gang member might be armed. Ordering defendant to face the wall and place his hands on his head as a preliminary step to a pat down search was prudent and objectively reasonable.

In summary, we conclude that the totality of the facts known to Officer Dilkes would have caused a reasonable law enforcement officer with similar training and experience to suspect that criminal activity had occurred, that defendant was involved in the activity (*People v. Conway* (1994) 25 Cal.App.4th 385, 388-389) and that he was armed (*People v. Medina* (2003) 110 Cal.App.4th 171, 176-177). The trial court therefore properly denied defendant's motion to suppress the firearm.

The order is affirmed.

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SPENCER, P. J.

We concur:

VOGEL, J.

MALLANO, J.